XI-H—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(19)

मामला क्रमांक F.A.M. 63 / सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANT:	Mohar Das, S/o Ghursai, aged about 30 years, By Caste Panika, R/o Village Saraipara, Kalipur, Tahsil Surajpur, Police Station Prem Nager, Distt. Surguja (C.G.)
		- Versus -
	RESPONDENTS: 1.	Smt. Vimla Bai, D/o Chhotudas, aged about 26 years, By Caste Panika,
	2.	Ku. Jugeshwari, D/o Mohar Sai, aged about 8 years,
	3.	Raju, S/o Shri Mohar Sai, aged about 6 years,
		No.2 & 3 minor through natural guardian mother – Vimla Bai, presently all are R/o Village Sargawa, Chowki Udaipur, Tahsil Ambikapur, District Surguja (C.G.)
	(Appeal under Section 19 (1) of the Family Court Act)	
	Division Bench: -	
	Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Sunil Kumar Sinha, JJ.	
	25-9-2007	
	Mr. Rahul Mishra, counsel for the appellant.	
	Heard.	
	The appellant has preferred this appeal under Section 19 (1) of the Family Courts Act, 1984, being aggrieved by the order dated 14-8-2007 passed by the Principal Judge, Family Court, Ambikapur, in Misc. Civil Case No.5/2006, whereby the application of the appellant herein has been rejected for giving custody of respondents No.2 & 3 herein i.e. Kum.	

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Jugeshwari, minor daughter & Raju minor son, respectively, of the appellant No.1 herein & respondent No.1 herein.

It is admitted position that the appellant herein is father of respondents No.2 & 3 herein, whereas respondent No.1 herein is their mother. On account of some dispute between husband & wife, respondent No.1 started living separately. It has also come on record that the appellant has contracted second marriage with one Sanmet. The application of the appellant filed under Section 6 of the Hindu Minority & Guardianship Act, 1956 read with Section 25 of the Guardians & Wards Act, 1890 for custody of respondents No.2 & 3 has been rejected on the ground that the appellant herein has contracted second marriage with Sanmet, therefore, there is every likelihood that Sanmet will not look after the welfare of the children being step mother, in the circumstances, it will be in the interest and welfare of the children to allow to them to continue to remain with their mother.

Learned counsel for the appellant argued that as per the provisions of Section 6 of the Act, 1956, father is the first guardian and he is entitled for custody of the child. He further argued that respondent No.1 is not in a position to bear the expenses of respondents No.2 & 3, therefore, she will not be able to look after the welfare of the children.

Having heard learned counsel for the appellant, we have perused the impugned order. In para 19 of the order, learned Principal Judge has observed that admittedly, the appellant herein has contracted second marriage with Sanmet who is residing with the appellant, therefore, there is every likelihood that she will give step motherly treatment to respondents No.2 & 3 herein, as such, it will not be in the interest and

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आदेश पत्रक (पूर्वानुबद्ध)

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welfare of the minor children to handover them to their father. As per the provisions of Section 6 (a) of the Act, 1956, natural guardian in the case of a boy or an unmarried girl is father, in the first instance and thereafter, mother. This fact is established and it cannot be denied. But it is settled principle of law that while giving custody of minor children paramount consideration before the Court is to see the welfare of children. Looking to the said settled principle of law, learned Principal Judge has observed that as the appellant herein has already contracted second marriage, there is every possibility that Sanmet, second wife of the appellant, will give step motherly treatment to respondents No.2 & 3, as such, he reached to the conclusion that it is in the interest and welfare of minor children that they should remain in the custody of their mother. We do not find any illegality or infirmity in the said finding and the said finding is based on sound reasonings and settled principle of law.

As far as the second argument of learned counsel for the appellant that respondent No.1, being a lady, is not financially sound to look after the welfare and bear the expenses of respondents No.2 & 3, perusal of para 18 of the order impugned reveals that in respect of respondents No.2 & 3 maintenance allowance has already been granted to the tune of Rs.500/- for each child, by the competent Court. Therefore, the argument advanced by learned counsel for the appellant, in view of the above order of granting maintenance allowance, is not sustainable.

In the result, we do not find any illegality or infirmity in the order impugned. The appeal is therefore, dismissed at the admission stage itself.

Sd/-
L.C.Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Soma